

TO ALLOW THE MIAMI TRIBE OF OKLAHOMA TO LEASE
OR TRANSFER CERTAIN LANDS

SEPTEMBER 8, 2015.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 487]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 487) to allow the Miami Tribe of Oklahoma to lease or transfer certain lands, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 487 is to allow the Miami Tribe of Oklahoma to lease or transfer certain lands.

BACKGROUND AND NEED FOR LEGISLATION

The Miami Tribe of Oklahoma (“Tribe”) is a federally recognized tribe and organized under the Oklahoma Indian Welfare Act of 1936.¹ The Tribe voted to adopt the Oklahoma Indian Welfare Act Constitution and Bylaws on October 10, 1939.

The Non-Intercourse Act (25 U.S.C. § 177) reserves to the United States the exclusive right to acquire Indian lands. The Act was intended to protect Indian tribes by preventing the loss of their lands, except by treaty. It does so by preventing the transfer, sale, lease, or other conveyance of land owned by an Indian tribe to third parties without federal approval. This prohibition applies to both trust and fee lands, regardless of the source of money used to obtain the lands. Over the centuries, a number of laws providing

¹ 49 Stat. 1967.

for the acquisition, conveyance, and leasing of land in trust for Indians have had the effect of superseding the Non-Intercourse Act even though this Act has never been repealed.

In recent years, the Non-Intercourse Act has generally not interfered with a tribe's ability to buy, sell, or lease land that it owns in fee simple. However, there is precedent for tribes to seek legislation in Congress to waive the Non-Intercourse Act, as H.R. 487 does, for transactions of non-trust land over an abundance of caution by both the tribal and non-tribal parties. In the 113th Congress, a bill nearly identical to H.R. 487 was enacted into law, allowing the Fond du Lac Band of Lake Superior Chippewa to lease or transfer fee land the tribe owned.² In the 106th Congress, a bill was enacted into law with a similar purpose for the Lower Sioux Indian Community in Minnesota.³ Congress has also enacted several other pieces of legislation authorizing several tribes to sell or mortgage specific lands.⁴

H.R. 487 would allow the Miami Tribe of Oklahoma to have more control over land that the tribe owns in fee without further Congressional approval. The bill simply ensures that the Non-intercourse Act does not interfere with the ability to convey fee land owned by the Tribe, which is viewed by the tribe as an interference with economic development and the creation of jobs. The tribe has stated that title insurance companies may not issue title commitments to either lenders or prospective purchasers due to uncertainties raised by an old act of Congress.

As noted previously, the Non-Intercourse Act has not generally interfered with a tribe's fee land dealings. However, the Act has generated a great deal of litigation throughout history which has resulted in several court decisions on the issue. Although the purpose of the Non-Intercourse Act is viewed by some as quite outdated, the U.S. Supreme Court in 2005 said it "remain[s] substantially in force today . . . [and] bars sales of tribal land without the acquiescence of the Federal Government."⁵

COMMITTEE ACTION

H.R. 487 was introduced on January 22, 2015, by Congressman Markwayne Mullin (R-OK). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Indian, Insular, and Alaska Native Affairs. On June 10, 2015, the Subcommittee held a hearing on the bill. On July 8, 2015, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. No amendments were offered, and the bill was ordered favorably reported to the House of Representatives by unanimous consent on July 9, 2015.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

²Public Law 102-497, 106 Stat. 3255.

³Public Law 107-331, 116 Stat. 2834.

⁴Public Law 103-435, 108 Stat. 4566; Public Law 105-256, 112 Stat. 1896.

⁵*City of Sherrill v. Oneida Indian Nation of New York*, 544 U.S. 197, 204 (2005).

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 487—A bill to allow the Miami Tribe of Oklahoma to lease or transfer certain lands

H.R. 487 would authorize the Miami Tribe of Oklahoma to lease, sell, warrant, or otherwise transfer any tribal property that is not held in trust by the federal government for the benefit of the tribe. Based on information provided by the Bureau of Indian Affairs, CBO estimates that implementing the legislation would have no effect on the federal budget.

Enacting H.R. 487 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. Any receipts from the transfer of the land under the legislation would be paid directly to the tribe.

H.R. 487 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would benefit the tribe.

The CBO staff contact for this estimate is Martin von Gnechten. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. The Congressional Budget Office estimates that implementation of this bill “would have no effect on the federal budget.”

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to allow the Miami Tribe of Oklahoma to lease or transfer certain lands.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

